In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1653

VIRGIL HAYES, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial with others in the United States District Court for the Northern District of Georgia, petitioner was convicted of unlawfully possessing non-taxpaid distilled spirits (26 U.S.C. 5205(a)(2) and 5604(a)(1)) and unlawfully carrying on the business of a retail liquor dealer without paying the special tax (26 U.S.C. 5691(a)). On October 26, 1970, he was given concurrent four-year prison sentences. The court of appeals affirmed without opinion (Pet. App.).

Petitioner here reasserts the claim advanced in the court of appeals that proof of possession of nontax-paid whiskey is not sufficient to establish guilt of possession of "distilled spirits". His contention is apparently that use of the term "nontaxpaid whiskey" at trial to describe the substance he possessed could not be construed as the equivalent of "distilled spirits" within the meaning of Sections 5205(a)(2) and 5604(a)(1).[1]

The contention is insubstantial. Under 26 U.S.C. 5002(a)(6), "distilled spirits" are defined as "that substance known as ethyl alcohol, ethanol, or spirits of wine, including all dilutions and mixtures thereof * * *." Notwithstanding the fact that the statutory term "distilled spirits" was not used at trial, it has been held that the terms "whiskey" or "liquor", used at the trial herein, are equivalent. *United States* v. *Bauguess*, 419 F. 2d 125 (C.A. 4).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1971.

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[1] It should be noted that petitioner's contention does not undermine his conviction for carrying on the business of a retail liquor dealer, which fully supports his sentence.

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